

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE**

FEDEX CORPORATION
and SUBSIDIARIES

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

Case No. 2:20-CV-02794

**UNITED STATES' UNOPPOSED MOTION FOR
EXTENSION OF TIME TO RESPOND TO PLAINTIFF'S COMPLAINT**

The United States respectfully requests, pursuant to FRCP 6(b)(1)(a), that the deadline to respond to plaintiff's complaint be extended by 46 days, from January 4, 2021, to February 19, 2021. As shown below, good cause exists for the extension sought. Plaintiff's counsel agrees to the extension requested.

1. This is a federal income tax case. In particular, plaintiff seeks refunds of \$145,578 and \$89,006,415 for its tax years 2018 and 2019, respectively. Plaintiff filed its complaint on November 2, 2020, and the summons and complaint were served on the United States Attorney for the Western District of Tennessee on November 3, 2020. (Dkt. Nos. 1, 13). Accordingly, the United States' response is currently due January 4, 2021.

2. The 31-page, 108-paragraph complaint includes two counts, one for each tax year. Each count requests a tax refund and incorporates the preceding allegations in the complaint. Plaintiff also separately sets forth three other paragraphs of requested relief, each purportedly

seeking a judgment that a Treasury Regulation is invalid under various provisions of the Administrative Procedures Act. (Dkt. No. 1, pp. 29-31).

3. In brief, plaintiff claims that for the years at issue it is entitled to additional foreign tax credits that would reduce its U.S. tax liability. Plaintiff's argument centers on its interpretation of some provisions added to the Tax Code as part of the 2017 Tax Cuts and Jobs Act, and the validity of a regulation subsequently issued. (*See, e.g.*, Dkt. No. 1, pp. ¶¶ 56-57). Plaintiff also alleges a transaction leading to "distributions" to it, which then purportedly allow it to claim additional foreign tax credits, under its interpretation of the governing law.

4. After receiving notice of the complaint, the United States began the process of gathering documents and information necessary to respond to the complaint. For example, counsel for the United States consulted the IRS and requested that the IRS obtain the relevant tax returns and any relevant files. The IRS has not yet provided those materials to the Department of Justice. The extension is requested to give the IRS additional time to collect any relevant files, and to allow counsel for the United States to review those materials and prepare an appropriate response to the complaint. Additionally, because plaintiff is challenging an existing Treasury Regulation, both procedurally and substantively, counsel will need to further consult with the IRS and have its response reviewed by appropriate officials at the Department of Justice and IRS. The additional time requested will allow us to do that.

5. On December 4, 2020, we conferred with plaintiff's counsel, who stated that plaintiff does not oppose the extension requested herein.

(Continued on following page.)

WHEREFORE, the United States respectfully requests that the deadline to respond to the complaint be extended to February 19, 2021.

Dated: December 10, 2020

Respectfully submitted,

Richard E. Zuckerman
Principal Deputy Assistant Attorney General

s/Cory A. Johnson
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CERTIFICATE BY COUNSEL
PURSUANT TO LOCAL RULE 7.2(A)(1)(B)

Pursuant to Local Rule 7.2(A)(1)(B), the undersigned certifies that counsel for the parties discussed the extension sought in the United States' Unopposed Motion for Extension of Time to Respond to Plaintiff's Complaint on December 4, 2020, by telephone. On behalf of plaintiff, Joseph B. Judkins, George M. Clarke and Cameron C. Reilly of Baker & McKenzie participated. On behalf of defendant, Cory A. Johnson, Nishant Kumar and Elizabeth M. Bruce of the United States Department of Justice, Tax Division, participated. Plaintiff agrees to the extension requested in this motion.

s/Cory A. Johnson
Cory A. Johnson